

15 October 2024

Secretariat
Aviation Industry Ombuds Scheme consultation
Department of Infrastructure, Transport, Regional Development,
Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

Dear Secretariat

Submission – The Aviation Industry Ombuds Scheme consultation paper

Canberra Airport appreciates the opportunity to make a submission to the Department in relation to the consultation paper on the *Aviation Industry Ombuds Scheme*.

The enclosed submission details Canberra Airports views on how the ombuds scheme can be effectively designed to assist passengers impacted by flight delays and cancellations.

Should you have any questions or require any additional information, please contact our Government Relations and Policy Advisor, Jordan Fallon, by phoning [REDACTED] or emailing [REDACTED]

Yours sincerely

[REDACTED]

Michael Thomson
Head of Aviation



SUBMISSION

The Aviation Industry Ombuds Scheme Consultation Paper

*Department of Infrastructure, Transport, Regional Development,
Communications and the Arts*

October 2024

Table of contents

Introduction	2
Objectives of the ombuds scheme	2
Members of the ombuds scheme	3
Funding arrangements	4
Governance arrangements	4
Complaints process	6
Publications by ombuds scheme	7
Conclusion	8

Introduction

Australians rely heavily on the aviation industry. It is a key cornerstone of the national economy. The industry keeps the country connected, providing passenger, freight, medical and support flights to major cities and regional communities. Consumers benefit from a strong and effective aviation sector.

Since the COVID-19 pandemic, consumers have expressed growing concerns about delays and cancellations by airlines. Canberra Airport shares these frustrations. Given that in June 2024, more than 4.9 million Australians were carried by domestic commercial aircraft for leisure and business travel, it is crucial that reliable services are delivered by all airlines.

In this same period, more than 224,000 passengers moved through Canberra Airport. Ensuring each passenger has a positive experience while transiting through the terminal is a central objective of the airport. The delivery of high-quality and efficient service by Canberra Airport staff and partners guarantees passengers have a more seamless and enjoyable journey.

Unfortunately, this vision cannot always be realised due to flight delays or cancellations. Canberra Airport shares the frustration felt by passengers when their scheduled flights do not proceed as planned.

The Aviation Industry Ombudsman Scheme should provide passengers with confidence that they will receive a refund in the event their flight is unreasonably delayed or cancelled. This will address the gap in Australian Consumer Law that has failed airline passengers for far too long.

Objectives of the ombuds scheme

The various initiatives announced in the *Aviation White Paper* will likely encourage airlines to adopt a more consumer-first approach, including the ombuds scheme. The ombuds scheme should address the unequal relationship between passengers and airlines that arise during disputes about unreasonable delays or cancellations.

If the ombuds scheme is to be an effective mechanism, it must be based on objectives which are designed to make airlines accountable to their customers. When a flight is delayed or cancelled, passengers expect that the service they have paid for will be delivered and, if not, that they will receive a refund.

The most significant disruption an airline customer is likely to experience during their travel is the unreasonable delay or cancellation of their flight. To meet the growing concerns of the community, the initial scope of the ombuds scheme must be focused solely on investigating complaints about flight delays and cancellations.

A narrow scope will assist with the initial implementation of the scheme and guarantee the main focus is about assisting airline customers who have been unable to receive a refund if their flight has been unreasonably delayed or cancelled.

It is necessary for specific guardrails to be implemented to ensure the remit of the ombuds scheme is not expanded to include secondary issues without proper consultation with industry stakeholders. It is anticipated the scheme will impose additional bureaucratic processes for scheme members who are already required to comply with significant regulatory mechanisms in order to operate. As such, providing adequate consultation on future proposals to expand the remit of the ombuds scheme will be necessary.

A staged implementation is important to ensure the ombuds scheme can adequately accommodate the significant number of complaints anticipated to be lodged by customers. Considerable resources will need to be directed to assist passengers to obtain remedies for flights delayed or cancelled by airlines.

It is clear that since the COVID-19 pandemic, the majority of complaints concerning aviation industry participants has been in relation to the conduct of airlines. As a consequence, airlines should be the initial focus of the scheme and, once the scheme's functions are well-established, a phased approach can be adopted to include other industry participants.

Members of the ombuds scheme

It is acknowledged and accepted that the majority of unreasonable delays and cancellations are due to the actions of airlines. Ensuring that all domestic passenger airlines operating in Australia are members of the scheme will guarantee that every travelling customer will have the opportunity to seek assistance if required.

The obligation for airports to be members of the scheme is recognised, however, it must be noted that very few delays or cancellations can be attributed to airports. In the 12 months to July 2024, only 1 per cent of all flight delays across Australia were directly caused by airports.

This is particularly relevant at Canberra Airport, where there have been only a limited number of incidents over the past decade where the airport has been seen to be responsible for flight delays or cancellations.

Given that airports do not have a contractual arrangement with airline customers, further clarification is required as to the remedy that an airport could be directed to provide if an airport is found responsible for causing an unreasonable delay or cancellation. In this instance, it would be excessive to expect an airport to refund the price of an airfare.

Membership of the scheme should also be extended to include Airservices Australia given its ongoing contribution to delays and cancellations. In August 2024, Airservices alone was responsible for 9 per cent of delays and 3 per cent of cancellations across the domestic

network. Whether it be staffing shortages, infrastructure shortcomings or technology failures, Airservices is also responsible for disrupting the travel plans of thousands of Australians each month.

It is necessary that the ombudsperson be empowered to also investigate Airservices Australia. This would provide confidence to the travelling public that all industry participants who contribute to unreasonable delays and cancellations will be held accountable. This appears to be the proposed intention of the ombuds scheme, yet by failing to include a key contributor to delays and cancellations, the scheme would fail to ensure all aviation stakeholders meet their obligations to passengers.

The oversight applied to airlines and airports under the ombuds scheme must be extended to Airservices.

Funding arrangements

Similar industry ombuds schemes are funded by members based on the size of the organisation, annual revenue or passenger numbers.

Canberra Airport believes that a levy imposed on scheme members should be based on the number of complaints lodged to the ombuds scheme per organisation. This would ensure a more equitable and fairer scheme, where the scheme members who generate the most complaints are the main contributors to the scheme.

Further engagement will occur with industry participants in 2025 regarding the most appropriate funding arrangement. However, in the meantime, Canberra Airport urges the Department to consider the implications that membership fees and charges will have on airfares. It is likely that airlines will seek to recover costs by passing them on to customers. This may be a further disincentive for people purchasing airfares as they already endure cost-of-living pressures.

Governance arrangements

To overcome the problems identified by various stakeholders with the ineffectiveness of the Airline Customer Advocate (ACA), it is necessary that good governance measures are implemented from the outset to support the ombuds scheme. Analysis of other domestic-led ombuds schemes highlights the considerable benefit of having an independent, expert board of directors to oversee the function of the schemes.

Appointing a board with extensive industry, consumer, management and governance experience would offer an additional level of assurance to aviation stakeholders that the ombuds scheme will achieve the objectives expected by passengers, industry participants and government. A board would be able to conduct appropriate reviews to ensure the scheme delivers objectives in a transparent and efficient manner. An independent

governance process will guarantee that interference by interested parties does not occur, as repeated criticism of the ACA has highlighted.

In addition, board governance would ensure ongoing strategic input and guidance are provided to the ombudsperson to guarantee a transparent, efficient and effective scheme is managed.

The composition of the board should include an independent chair who possesses industry specific knowledge and six non-executive directors who share a balanced mix of aviation and consumer experience. As the scope of the ombuds scheme expands, it may be appropriate to consider the appointment of directors with expertise in aircraft noise management.

Canberra Airport proposes that an initial board be comprised of the following positions, and each filled by an individual who possesses the necessary knowledge and experience:

Position	Description
Chair	Independent appointee with extensive experience across the aviation industry that balances the needs of all scheme members.
Industry directors (3)	Appointees possess the requisite knowledge and experience in one of the various sectors of the aviation industry for which the scheme has remit. As airports are considered a key stakeholder in the proposed ombuds scheme, it is necessary that an individual with considerable airport experience be included. To factor in the eventual transfer of the responsibilities of the ANO, it is imperative in the future that one industry director also have experience in flight path design and the management of aircraft noise.
Consumer directors (3)	The appointment of consumer affairs experts will assist in the development of the strategic objectives required to effectively support the functions of the scheme.

The *Consultation Paper* canvasses the prospect of establishing two separate ombudspersons responsible for investigating complaints brought by consumers and responding to grievances about aircraft noise.

Transferring the responsibilities of the existing ANO to the ombuds scheme would provide greater transparency and broader confidence to those impacted by aircraft noise that their concerns will be appropriately investigated. However, Canberra Airport is concerned that the appointment of two individual ombudspersons would create additional regulatory, administration and financial burden for scheme members. When considering the workload of the existing ANO, there is no compelling argument to proceed with the establishment of two separate ombuds roles.

In the first quarter of 2024, the ANO received 326 complaints from across Australia about aircraft noise. Of those complaints, the ANO determined that 211 of these were non-actionable. Only 115 complaints progressed to further consideration and investigation.

During the same reporting period, similar-sized ombuds schemes, the Private Health Insurance Ombudsman received 1,002 complaints and the Energy and Water Ombudsman NSW (EWON) received 6,841. Each of these schemes has one ombudsperson supported by staff who are able to reasonably collate, investigate and report on a large number of complaints each quarter.

Canberra Airport submits that it is unlikely, even following the transfer of the responsibilities of the ANO, that the aviation industry ombudsperson would receive the same number of complaints as the EWON per quarter. By ensuring the ombudsperson is well-resourced and supported, it is probable that they would be able to effectively manage the workload to investigate complaints received under the objectives of the scheme.

As the ombuds scheme commences, Canberra Airport supports the appointment of one ombudsperson.

Complaints process

Canberra Airport believes that initially the ombuds scheme should only accept complaints concerning unreasonable delays or cancellations. With the transition of the functions of the ANO at a later date, noise should be the second tranche of complaints considered. Any desire to extend the remit to include other functions exercised by aviation participants should only be considered following extensive consultation.

Providing a clear framework for the type of complaints that will be considered and accepted by the ombuds scheme will reduce the likelihood of vexatious and baseless complaints being lodged against members. There must be a focus on ensuring the scheme does not provide a platform for disgruntled customers to continually make complaints without appropriate or relevant evidence.

Canberra Airport supports the proposal to only allow consumers, as defined under Australian Consumer Law, to make complaints to the ombuds scheme. As airfares can only be purchased in the name of an individual, there is no compelling reason to provide any other entity with the mechanism to lodge a complaint about unreasonable delays or cancellations.

However, upon the transition of the responsibilities of the ANO to the ombuds scheme, it must be recognised that many businesses, particularly small-and-medium sized, may be located in close vicinity to airports and can at times be impacted by aircraft noise. In these situations, it would be reasonable for a business, rather than an individual acting on behalf of the entity, to lodge a complaint. Further consideration of how to best manage these competing needs will be required as the scheme progresses.

Canberra Airport does not support the proposal for the ombudsperson to handle privacy complaints received about scheme members. The Office of the Australian Information Commissioner is well-established in receiving complaints and undertaking investigations into allegations of breaches of privacy by an organisation. To avoid confusion among the

public and to guarantee the agency best equipped to deal with matters concerning privacy, Canberra Airport recommends that the remit of the ombuds scheme not be extended to include privacy complaints. This will ensure that the ombudsperson can focus on providing assistance where a gap exists across the aviation industry and not become involved in investigations for which a responsible body already exists.

It is important that members of the scheme are afforded a reasonable period of time to work with a complainant to resolve their concerns before referral to the ombuds scheme. This provides members with ample opportunity to identify potential shortcomings in existing processes, implement corrections and, if necessary, offer remedies.

For instance, under an ombuds scheme in an overseas jurisdiction, industry participants are afforded 60 days to provide a response to a complainant after a complaint is lodged. If a response is not provided in this timeframe or the complainant is not satisfied with the reply, then a complainant can escalate their concerns to a dispute resolution body. Canberra Airport supports the adoption of this process by providing scheme members 60 days to investigate and respond to a complaint before it can be referred to the ombuds scheme. The time where a scheme member is waiting for additional information from a complainant should not be included in this timeframe.

Once a complaint is made to the ombuds scheme for investigation, it is imperative that an efficient resolution process is conducted. Canberra Airport recommends that the ombuds scheme sets a resolution target of 90 days for each complaint.

Publications by ombuds scheme

To guarantee the effectiveness of the ombuds scheme and provide assurance to consumers, Canberra Airport believes reports should be published on a quarterly basis. These publications should detail the number of complaints received each quarter per scheme member, the resolution rate, the processing time for complaints and trends that emerge regarding complainants.

An open and transparent procedure is likely to incentivise scheme members to improve processes and resolve complaints prior to referral to the ombuds scheme. The questionable conduct of industry participants since COVID-19, particularly concerning unreasonable delays and cancellations, has been due to a lack of accountability. Regular reporting of the complaints received by the ombudsperson would be an additional layer of accountability. This would complement the 'show cause' proposal to force airlines to report the reasons for delays and cancellations as announced in the *Aviation White Paper*.

Conclusion

Canberra Airport appreciates the opportunity to provide feedback on the *Consultation Paper*.

The ombuds scheme would be most effective by adopting a narrow scope funded through a levy imposed on scheme members based on the number of complaints lodged against them. It is appropriate that those who contribute the most to the overall workload of the ombudsperson be responsible for providing the largest provision of funding.

Ensuring passengers receive a refund if the service they paid for is not delivered should be the key priority of the ombuds scheme in the short-to-medium term. By focusing on addressing the inequality that currently exists between passengers and airlines when disputes arise, the ombuds scheme can boost confidence in the aviation industry.

As planning of the ombuds scheme progresses, Canberra Airport looks forward to remaining consulted to ensure the final iteration reflects the views of the broader aviation industry.